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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE ELIZABETH HERNANDEZ,

Defendant and Appellant.

G050348

(Super. Ct. No. 11CF2055)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood and Brendon W. Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Michelle Elizabeth Hernandez was convicted of robbery, conspiracy, recklessly evading the police and street terrorism. While she does not challenge her underlying convictions, she contends there is insufficient evidence to support the jury's additional finding that her crimes were gang related. Because the record contains substantial evidence to support the jury's finding in that regard, we affirm the judgment.

FACTS

A detailed factual account of appellant's crimes is set forth in *People v. Carmona* (May 7, 2014, G047808) [nonpub. opn.], which we incorporate by reference. That opinion reflects appellant and codefendants Luis Carmona and Lorenzo Vizcarra were driving around together in Newport Beach early one morning when they bumped into the back tire of 67-year-old Martin Capune, who was bicycling on the side of the road. While Capune was inspecting the damage to his bike, Carmona, the driver, and Vizcarra, the front passenger, exited their car and demanded five dollars from him. While Capune was reaching for his wallet, appellant yelled out from the car, "Get all his money." After that, Vizcarra hit Capune in the side of the head, knocking him out. Then he, Carmona and appellant made off with Capune's wallet.

The police were quick to respond to the scene. However, when they tried to pull over appellant's car, Carmona sped away and led officers on an extended high-speed chase. During the pursuit, someone tossed Capune's wallet out the window of appellant's car. When their vehicle was finally cornered in Fullerton, appellant and Vizcarra surrendered to police, but Carmona fled on foot and did not turn himself in until the following day. The police found \$40 in appellant's car, which was the amount missing from Capune's wallet when it was returned to him.

At trial, the prosecution's gang expert John Radus testified that at the time of the robbery, appellant and Vizcarra were active members of the Baker Street Gang, and Carmona was an associate of that gang. Radus stated Baker Street is based in

Fullerton and has the attributes of a typical Southern California Hispanic street gang. With about 50 documented members, Baker Street's primary activities include robbery and assault with a deadly weapon.

Radus testified Southern California Hispanic gang members covet respect, which is earned by committing crimes and instilling fear in the community. And when they do commit crimes, they often work together so they can be more effective and back each other up if anything goes wrong. Radus also stated that loyalty and trust are extremely important to gang members. In fact, failing to support or "ratting out" other members will likely be met with physical violence or other adverse consequences.

Based on a hypothetical question steeped in the facts of the case, Radus opined that if a group of gang members were to forcibly take a person's wallet and flee from the police, it would benefit their gang by enhancing its reputation for indiscriminate violence and lawlessness. It would also enhance the individual reputations of the members who carried out the crimes and embolden other members of their gang to commit crimes. In addition, stealing a person's wallet would create the potential for financial benefit to the gang, even if the wallet was eventually discarded. As Radus explained, money derived from gang member's crimes can be used to purchase drugs, weapons or other items for the gang, and it can also be used to buy gas so they can drive around and commit crimes outside their claimed territory.

During closing argument, defense counsel argued appellant's crimes had nothing to do with her gang. However, in addition to finding appellant guilty of robbery, conspiracy, recklessly evading the police and street terrorism, the jury also found true an enhancement allegation that, in committing the first three of those crimes, appellant acted for the benefit of, at the direction of, or in association with a criminal street gang. The trial court sentenced her to a term of 19 years and 8 months in prison, which was encompassed within a separate 20-year maximum sentence appellant plea bargained for in two other unrelated cases.

DISCUSSION

Appellant contends there is insufficient evidence to support the jury's true finding on the gang enhancement. We disagree.

The standard of review for assessing the sufficiency of the evidence to support a criminal conviction is "highly deferential." (*People v. Lochtefeld* (2000) 77 Cal.App.4th 533, 538.) Our task is to "review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence . . . from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) In so doing, we do not reweigh the evidence or reevaluate the credibility of the witnesses who testified at trial; rather, "[w]e presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]" (*Ibid.*) "The conviction shall stand 'unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support [it]."' [Citation.]" (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) The same standard applies when, as here, we are reviewing the sufficiency of the evidence to support a jury's true finding on an enhancement allegation. (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

Penal Code section 186.22, subdivision (b)(1) authorizes a sentence enhancement when the defendant "is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members[.]" Although the enhancement only applies when the underlying crime is "gang related" (*People v. Gardeley* (1996) 14 Cal.4th 605, 622), and "[n]ot every crime committed by gang members is related to a gang" (*People v. Albillar, supra*, 51 Cal.4th at p. 60), we believe

there is substantial evidence to support the jury's finding appellant's crimes in this case were gang related.

In arguing otherwise, appellant claims there is nothing about the facts that suggest any sort of gang connection. For instance, no one in her group flashed any gang signs or yelled their gang's name before the attack, the victim Capune was not a member of any gang or targeted out of retaliation, and the crime did not take place in Baker Street's territory. However, as often occurs in gang crimes, appellant's group worked together, i.e., "in association with" one another in achieving their objective: Carmona was the wheelman, Vizcarra was the muscle, and appellant provided encouragement and direction. And their common gang membership ensured they could trust each other both during and after committing the subject crimes. (*People v. Albillar, supra*, 51 Cal.4th at pp. 61-62.)

Moreover, the fact they committed a violent crime and brazenly fled from the police increased the likelihood their individual reputations, as well as the reputation of their gang, would be enhanced. Even though there was no direct evidence anyone in appellant's gang or the public at large knew how the robbery went down, the lengthy police chase ended on Iris Court in Fullerton, which is in the heart of the territory claimed by Baker Street. Based on this, the jury could reasonably infer that word of appellant's exploits would eventually get around on the street.

Appellant's crimes also carried the potential for financial gain, which can be a boost to gangs. Indeed, gang expert Radus clearly explained how gangs benefit when their members bring in money from criminal activity. While it is certainly *possible* appellant and her companions were not thinking about Baker Street's bottom line when they took Capune's wallet, the jury was entitled to conclude otherwise based on Radus' testimony. (*People v. Albillar, supra*, 51 Cal.4th at p. 63.)

Appellant assails Radus' testimony as being too general, claiming "nothing in his knowledge base was predicated on anything [Baker Street] members were known to do." That is simply not true. During his time in the Fullerton Police Department's gang unit, Radus personally investigated many of Baker Street's crimes and spoke to many of its members. He also knew the gang's primary activities include robbery, which was the principal crime in this case. Although much of Radus' testimony about gang culture was based on his understanding of Hispanic gangs from Southern California in general, he made it clear Baker Street is a "typical" gang of that ilk. Therefore, the jury could fairly deduce Radus' testimony logically pertained to Baker Street and the crimes in question.

As noted above, those crimes were accomplished by a group of gang members/associates acting in concert. They were not carried out by a lone gang member, which is the hallmark of cases in which the gang connection has been found to be lacking. (See, e.g., *People v. Ochoa* (2009) 179 Cal.App.4th 650, 653; *In re Frank S.* (2006) 141 Cal.App.4th 1192, 1195.) Appellant correctly notes that evidence of a gang connection was also found lacking in *People v. Albarran* (2007) 149 Cal.App.4th 214, even though the defendant, a gang member, was accompanied by another person when he committed the subject offenses. However, because the identity of the defendant's companion was never determined, it was not reasonable to infer the defendant was working in cahoots with other gang members in that case. (*Id.* at p. 227, fn. 9.) The situation in the present case is quite different. Because appellant was in the company of two known gang members/associates when she committed the instant offenses, *Albarran* is distinguishable.

Appellant's reliance on *In re Daniel C.* (2011) 195 Cal.App.4th 1350 is also misplaced. In fact, in that case the court found there was substantial evidence the defendant's robbery was committed in association with a criminal street gang, even though he committed the robbery by himself. (*Id.* at pp. 1353-1354, 1358-1359.) For

purposes of the association requirement, it was sufficient that the defendant's gang pals had accompanied him to the location where the robbery occurred and waited for him nearby until the crime was over. (*Ibid.*)

Here, appellant was not only in the company of two other gang members/associates before and after the robbery, the evidence shows they all worked together in carrying out the crime. She was giving direction to the other gang members ("get all his money.") Although the evidence to support the gang enhancement is not overwhelming, there is substantial evidence from which the jury could conclude appellant acted in association with and for the benefit of a criminal street gang in this case. We are powerless to disturb the jury's verdict on these facts.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.